

Memorandum
Fair Political Practices Commission

To: Chairman Johnson; Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Scott Hallabrin, General Counsel
Lawrence T. Woodlock, Senior Commission Counsel

Subject: Pending Litigation

Date: March 20, 2008

1. *California ProLife Council, Inc. v. Karen Getman, et al.*

This action challenged the Act's reporting requirements for express ballot measure advocacy. In 2000 the Federal District Court for the Eastern District of California dismissed certain counts and granted the FPPC's motion for summary judgment on the remaining claims. The Ninth Circuit Court of Appeal agreed that the challenged statutes and regulations were not unconstitutionally vague, and that California may regulate ballot measure advocacy if it can show a sufficient state interest for its rules. The Ninth Circuit remanded the matter to the district court to determine whether California could establish an interest sufficient to support its disclosure rules, and that those rules are properly tailored to that interest. On February 22, 2005, the district court granted defendants' motion for summary judgment on those questions. Plaintiff again appealed. The Ninth Circuit heard oral argument on February 12, 2007. On November 14, 2007 the court released its opinion under the name *California ProLife Council, Inc. v. Randolph*, finding that California had established its compelling interest in disclosure of the sources of funds used to make independent expenditures supporting or opposing ballot measures. The court did find, however, that when the entity making such expenditures was a multi-purpose non-profit group organized as a Section 501(c)(4) corporation, which did not make expenditures or contributions towards the election or defeat of candidates, the Commission failed to demonstrate how the ancillary rules involving registration as a recipient committee were sufficiently tailored to support California's compelling interest in disclosure. The Ninth Circuit remanded the case to the trial court without further instructions. The parties have submitted a Joint Status Conference Report and proposed judgments. The court vacated the Status Conference and requested briefing from the parties to assist the court in evaluating the parties' proposals. After this briefing, the trial court entered an order and final judgment in the case, finding that plaintiff had prevailed on one of its ten claims, and entering judgment enjoining the Commission from imposing on plaintiff and similar groups the ancillary recipient committee rules referenced in the Ninth Circuit's November opinion. The Commission had anticipated this judgment, and in December, 2007 adopted Emergency Regulation 18413 to comply with the Ninth Circuit's ruling.

2. Carole Migden et al v. FPPC et al.

On March 3, 2008 Senator Carole Migden and her campaign committees filed suit against the Commission in the federal District Court for the Eastern District of California seeking declaratory and injunctive relief on a claim that the Act's "surplus funds statute," Government Code Section 89519, was an unconstitutional limitation on the expenditure of campaign funds. The case is assigned to Magistrate-Judge Edmund F. Brennan. The Commission filed its Opposition to Senator Migden's Motion for Preliminary Injunction on March 18, 2008. On March 20, 2008 the Commission voted to accept a Stipulation from Senator Migden admitting 89 violations of the Act not at issue in her lawsuit, agreeing to pay an administrative fine of \$350,000. On March 25, 2008 the Commission filed its Answer to Senator Migden's Complaint, along with a Counterclaim seeking damages for numerous additional violations of the Act that Senator Migden did not admit in the Stipulation. The court will hear Senator Migden's Motion for Preliminary Injunction on April 1, 2008, at 10 a.m.